SUPREME COURT OF THE UNITED STATES.

No. 110.

THOMAS BEALS, PLAINTIFF,

vs.

FELICITE HALE.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT, U. S., FOR MICHIGAN.

THE CIRCUIT COURT OF THE UNITED STATES,
For the seventh judicial circuit, district of Michigan:

Present, hon. John McLean, one of [the] justices of the Supreme Court of the United States, and presiding judge of said circuit, and hon. Ross Wilkins, judge of the district of Michigan.

This was an action of ejectment, brought by the plaintiff, Thomas Beals, who is a citizen of New York, against Felicite Hale, the defendant, who is a citizen of the State of Michigan. Nathaniel Weed, Harvey Weed, and Henry W. Barnes, were, on application, permitted to defend their title to the said premises, claiming that the said Felicite Hale was their tenant, and in possession under them.

The declaration was in the following words, to wit:

CIRCUIT COURT OF THE U. STATES,
For the district of Michigan:

Of the tenth day of April, in the year eighteen hundred and forty-three.

DISTRICT OF MICHIGAN, *ss.*

Thomas Beals, who is a citizen of the State of New York, plaintiff, by Douglass & Walker, his attorneys, comes into this court, according to the form of the statute, and the rules of this court, authorizing the commencement of suits by declaration, and complains of Felicite Hale, who is a citizen of the State of Michigan, defendant; for that whereas, the said plaintiff, on the seventh day of April, one thousand eight hundred and forty-two, was possessed of a certain garden, with the appurtenances, situate in the city of Detroit, in the district of Michigan, and being known and designated as lot number sixteen, on the south side of Congress street, in the said city of Detroit, according to the plat of the military reservation, so called, which said premises the plaintiff claims in fee. And being so possessed thereof, the said defendant afterwards, to wit, on the seventh day of April, one thousand eight hundred and

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forty-two, entered into and upon the *the* said premises, and ejected the said plaintiff therefrom, and unlawfully withholds from him the possession thereof. And also for that whereas, the said Thomas Beals, on the said seventh day of April, one thousand eight hundred and forty-two, was possessed of certain other garden, with the appurtenances thereunto belonging, situate in the said city of Detroit, in the district of Michigan, known and designated and described as lot number seventeen, on the south side of Congress street, upon the military reservation, so called, said lot being fifty feet in front, by one hundred and twenty in depth, which said premises the plaintiff claims in fee. And being so possessed thereof, the said defendant afterwards, to wit, on the said seventh day of April, one thousand eight hundred and forty-two, entered into and upon the said premises, and ejected the said plaintiff therefrom, and unlawfully withholds from him the possession thereof. And also, for that whereas, the said Thomas Beals, on the said seventh day of April, one thousand eight hundred and forty-two, was possessed of a certain dwelling house, with the appurtenances, situate in the city of Detroit, in the district of Michigan aforesaid, and within the jurisdiction of this court, and being known and designated as lot number eighteen, on the south side of Congress street, on the military reservation, so called, in the said city, according to the plan or subdivision of said military reservation, remaining of record, which said premises the said plaintiff claims in fee. And being so possessed thereof, the said defendant afterwards, to wit, on the said seventh day of April, one thousand eight hundred and forty-two, entered into and upon the said premises, and ejected the said plaintiff therefrom, and unlawfully withholds from him the possession thereof. And also, for that whereas, the said Thomas Beals, on the said seventh day of April, one thousand eight hundred and forty-two, was possessed of certain other lands and premises, with the appurtenances, situate in the city of Detroit, in the district of Michigan aforesaid, and being known and designated and described as lots number sixteen, seventeen, and eighteen, on the south side of Congress street, upon the military reservation, so called, each of said lots being fifty feet in front, by one hundred and twenty feet in depth, which said premises the said plaintiff claims in fee. And being so possessed thereof, the said defendant afterwards, to wit, on the seventh day of April, one thousand eight hundred and forty-two, entered into and upon the said premises, and ejected the said plaintiff therefrom, and unlawfully withholds from him the possession thereof, to the damage of the said plaintiff of one thousand five hundred dollars, and therefore he brings suit, &c.

DOUGLASS & WALKER,
Attorneys for plaintiff.

You are hereby notified, that the declaration, a copy whereof is herewith delivered, and to which copy this "notice" is subjoined, will be filed on the tenth day of April, instant, with the clerk of the within entitled court, in the city of Detroit, and district of Michigan, and that upon filing the same, a rule will be entered, requiring you to appear and

plead to the said declaration within twenty days after the entry of such rule, and if you neglect to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Yours, &c.,
DOUGLASS & WALKER.

Dated, *April* 7, 1843.

Plea.

FELICITE HALE,
ads.
THOMAS BEALS.

CIRCUIT COURT OF THE U. STATES,
For the district of Michigan:

And the said Felicite Hale, by George C. Bates, her attorney, comes and defends the force and injury, when, &c., and says, that she is not guilty of unlawfully withholding the premises claimed by the plaintiff, as alledged in the declaration: And of this the said defendant puts herself upon the country, &c.

GEORGE C. BATES,
Defendant's attorney.

At a session of the circuit court of the U. States, for the seventh circuit and district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Wednesday, the eleventh day of October, in the year of our Lord one thousand eight hundred and forty-three.

Present, hon. John McLean, associate justice of the Supreme Court of the United States, hon. Ross Wilkins, district judge.

THOMAS BEALS,
vs.
FELICITE HALE.

Issue being joined in this case, and the parties present, by their respective attorneys, hereupon comes a jury, to wit: John C. Mundy, Alanson Sherwood, William P. Patrick, Albert Bennet, Robert Rumney, Austin Stocking, Sylvester Granger, Garry Spencer, John Bour, James Beaubien, Tunis S. Wendell, and James Cicotte, sen., who, being impannelled and sworn to try the issue joined in this cause, and after having heard the evidence adduced therein, find specially the following facts, and say, that John Hale was, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and twenty-eight, seized and possessed, in his own right, of said lots number sixteen, seventeen, and eighteen, in the city of Detroit, county of Wayne, and (then Territory, now) State of Michigan.

That being so seized and possessed of the said premises, he, the said John Hale and Felicite Hale his wife, executed a mortgage to secure the payment of a certain sum of money, to one James Lyon, bearing

date the thirteenth day of November, in the year of our Lord one thousand eight hundred and twenty-eight, of the said lots, together with other lands lying in the said county of Wayne, as well as of certain lands in the county of Monroe, in the then Territory of Michigan, which said mortgage was recorded in the office of the register of the said county of Wayne, where said lots, and another part of said mortgaged premises were situated, on the thirtieth day of January, in the year eighteen hundred and twenty-nine, in liber nine of mortgages, pages one hundred and three, one hundred and four, one hundred and five, &c.; and also in the county of Monroe, where the remainder of said lands and premises were situated, in the office of register for said county, in liber I, folios two hundred and eighty-one, to two hundred and eighty-six. That said mortgage was afterwards, to wit, on the twenty-first day [of] November, in the year eighteen hundred and thirty-eight, foreclosed under the statutes of the State of Michigan, and the said several lots sold at public auction, and struck off to said Lyon, at the sale thereof; and that a sheriff's deed was afterwards, on the sixth day of April, A. D. 1842, executed to the said plaintiff, as assignee of the certificate of sale to said Lyon, of the said lots, they not having been redeemed within two years from the time of sale, pursuant to statutes of said State in such case made and provided, which said deed was duly recorded.

And the said jury further find, that the said John Hale and Felicite his wife, after the execution of the former mortgage, and before a foreclosure thereof, to wit, on the sixth day of June, in the year eighteen hundred and thirty-seven, for a good and valuable consideration, duly made, acknowledged, and delivered, under their respective hands and seals, to Nathaniel Weed, Harvey Weed, and Henry W. Barnes, (who had no notice of said prior mortgage, unless said record was notice,) another or second mortgage on the said premises, lots sixteen, seventeen, and eighteen, in the city of Detroit, county of Wayne, and State of Michigan, which said mortgage, bearing date the said sixth day of June, in the year eighteen hundred and thirty-seven, was duly recorded in the appropriate registry, on the seventh day of June, in the year eighteen hundred and thirty-seven, in liber eight, folio three hundred and forty-three of mortgages; and which said mortgage was afterwards, on the thirty-first day of August, in the year eighteen hundred and thirty-nine, foreclosed under the statutes of said State, exposed to sale, and struck off to said Weeds and Barnes, at the said sale, and not having been redeemed within two years therefrom, that a sheriff's deed of said premises was executed on the sixteenth day of August, eighteen hundred and forty-two, and delivered to said Nathaniel and Harvey Weed, and Henry W. Barnes, of all and singular the said premises, which was duly recorded.

That the plaintiff and defendant both claim, under the respective mortgages above set forth, and the sheriff's deeds under the respective foreclosures aforesaid; and that Felicite Hale, the defendant, was, at the institution of this suit, and still is, a tenant in possession of said premises, under a lease from said Weeds & Barnes, who are admitted, under the statute, to defend as her landlords.

And the jurors aforesaid, on their oaths aforesaid, do further say, that if it shall appear to the said court, from the facts above found, that the recording of said prior mortgage, from Hale to Lyon, in the registry of Wayne county, was sufficient record thereof to constitute notice of said mortgage, under the laws of Michigan, in reference to mortgages of real estate, situate in the county of Wayne, within the limits of the city of Detroit, then they find for the plaintiff.

But should said court be of opinion, that said record in the office of said registry, for the county of Wayne, was invalid and insufficient in law, so far as the said premises in the city of Detroit are concerned, to constitute notice thereof to the subsequent mortgages, then they find for the defendants.

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On consideration of the said special verdict, the same being brought before the court, on a motion for judgment on the verdict, the opinions of the judges were opposed on the point, whether the recording of the mortgage from Hale to Lyon, in the registry of Wayne county, was a sufficient record thereof to constitute notice of said mortgage, under the laws of Michigan, in reference to mortgagees of real estate, in the county of Wayne, within the limits of the city of Detroit; and it is ordered and directed, that this cause, with said point, be certified to the Supreme Court of the United States, in pursuance of the act of Congress in such case made and provided.

CIRCUIT COURT OF THE UNITED STATES,
For the seventh circuit and district of Michigan, ss:

I, John Winder, clerk of said court, do hereby certify the above and foregoing to be a true exemplification of the pleadings in the case of Thomas Beals, plaintiff, against Felicité Hale, defendant, and of the proceedings of said court therein, from the records and files thereof.

In testimony whereof, I have hereunto set my hand, and affixed the [SEAL.] seal of said court, at the city of Detroit, this fifth day of January, A. D. eighteen hundred and forty-four.

JNO. WINDER, *Clerk.*

Filed, , 1844.

date the thirteenth day of November, in the year of our Lord one thousand eight hundred and twenty-eight, of the said lots, together with other lands lying in the said county of Wayne, as well as of certain lands in the county of Monroe, in the then Territory of Michigan, which said mortgage was recorded in the office of the register of the said county of Wayne, where said lots, and another part of said mortgaged premises were situated, on the thirtieth day of January, in the year eighteen hundred and twenty-nine, in liber nine of mortgages, pages one hundred and three, one hundred and four, one hundred and five, &c.; and also in the county of Monroe, where the remainder of said lands and premises were situated, in the office of register for said county, in liber I, folios two hundred and eighty-one, to two hundred and eighty-six. That said mortgage was afterwards, to wit, on the twenty-first day [of] November, in the year eighteen hundred and thirty-eight, foreclosed under the statutes of the State of Michigan, and the said several lots sold at public auction, and struck off to said Lyon, at the sale thereof; and that a sheriff's deed was afterwards, on the sixth day of April, A. D. 1842, executed to the said plaintiff, as assignee of the certificate of sale to said Lyon, of the said lots, they not having been redeemed within two years from the time of sale, pursuant to statutes of said State in such case made and provided, which said deed was duly recorded.

And the said jury further find, that the said John Hale and Felicite his wife, after the execution of the former mortgage, and before a foreclosure thereof, to wit, on the sixth day of June, in the year eighteen hundred and thirty-seven, for a good and valuable consideration, duly made, acknowledged, and delivered, under their respective hands and seals, to Nathaniel Weed, Harvey Weed, and Henry W. Barnes, (who had no notice of said prior mortgage, unless said record was notice,) another or second mortgage on the said premises, lots sixteen, seventeen, and eighteen, in the city of Detroit, county of Wayne, and State of Michigan, which said mortgage, bearing date the said sixth day of June, in the year eighteen hundred and thirty-seven, was duly recorded in the appropriate registry, on the seventh day of June, in the year eighteen hundred and thirty-seven, in liber eight, folio three hundred and forty-three of mortgages; and which said mortgage was afterwards, on the thirty-first day of August, in the year eighteen hundred and thirty-nine, foreclosed under the statutes of said State, exposed to sale, and struck off to said Weeds and Barnes, at the said sale, and not having been redeemed within two years therefrom, that a sheriff's deed of said premises was executed on the sixteenth day of August, eighteen hundred and forty-two, and delivered to said Nathaniel and Harvey Weed, and Henry W. Barnes, of all and singular the said premises, which was duly recorded.

That the plaintiff and defendant both claim, under the respective mortgages above set forth, and the sheriff's deeds under the respective foreclosures aforesaid; and that Felicite Hale, the defendant, was, at the institution of this suit, and still is, a tenant in possession of said premises, under a lease from said Weeds & Barnes, who are admitted, under the statute, to defend as her landlords.

And the jurors aforesaid, on their oaths aforesaid, do further say, that if it shall appear to the said court, from the facts above found, that the recording of said prior mortgage, from Hale to Lyon, in the registry of Wayne county, was sufficient record thereof to constitute notice of said mortgage, under the laws of Michigan, in reference to mortgages of real estate, situate in the county of Wayne, within the limits of the city of Detroit, then they find for the plaintiff.

But should said court be of opinion, that said record in the office of said registry, for the county of Wayne, was invalid and insufficient in law, so far as the said premises in the city of Detroit are concerned, to constitute notice thereof to the subsequent mortgages, then they find for the defendants.

THOMAS BEALS, vs. FELICITE HALE. } No. 110, Michigan C. C. U. S.

On consideration of the said special verdict, the same being brought before the court, on a motion for judgment on the verdict, the opinions of the judges were opposed on the point, whether the recording of the mortgage from Hale to Lyon, in the registry of Wayne county, was a sufficient record thereof to constitute notice of said mortgage, under the laws of Michigan, in reference to mortgagees of real estate, in the county of Wayne, within the limits of the city of Detroit; and it is ordered and directed, that this cause, with said point, be certified to the Supreme Court of the United States, in pursuance of the act of Congress in such case made and provided.

CIRCUIT COURT OF THE UNITED STATES,
For the seventh circuit and district of Michigan, ss:

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In testimony whereof, I have hereunto set my hand, and affixed the [SEAL.] seal of said court, at the city of Detroit, this fifth day of January, A. D. eighteen hundred and forty-four.

JNO. WINDER, *Clerk.*

Filed, , 1844.